

1 had not been used for many years, like more than five years  
2 before I was asked to produce the discovery on USFS permits.  
3 So, I grabbed my operational files of the most recent, more  
4 than five years worth of Forestry permits, and provided it  
5 to the Bureau. These were either in archive or stuffed  
6 away, but this was a specific challenge to those. I went  
7 looking for them.

8 Q Would you refer, Mr. Kay, to Exhibit 19?

9 A Okay.

10 Q And, why that wasn't produced in response to  
11 discovery?

12 A I don't know that it wasn't.

13 MR. KELLER: I might note for the record that for  
14 the purposes of all these, Mr. Kay and I were ill last week.  
15 We haven't had time to confirm this, so we're accepting the  
16 Bureau's representation that they're not there. So, all of  
17 these questions are assuming for the sake of argument that  
18 they're not.

19 MR. KNOWLES-KELLETT: Our objection goes away, if  
20 he tells us the base number.

21 MR. KELLER: I understand.

22 MR. SCHAUBLE: Your Honor, I would note that the  
23 documents produced by Kay, discovery was proceeding, were  
24 given a Bates stamp number.

25 MR. KELLER: Right, I understand.

1 THE WITNESS: If they weren't, I have no  
2 explanation why they weren't, beyond that looking at these  
3 here, I'm sure these were photocopied from my files and sent  
4 to my counsel. If they didn't, for some reason, get to the  
5 Bureau, I haven't a clue why they did not, because these I'm  
6 sure I copied off. These would definitely have been in one  
7 of the active folders. If it exonerates me, why wouldn't I  
8 send it?

9 MR. KELLER: Were there any other objections on  
10 that basis?

11 MR. SCHAUBLE: Kay Exhibit 26.

12 BY MR. SHAINIS:

13 Q Mr. Kay, if you can refer to Exhibit 26? Do you  
14 recall a reason that that document was not produced pursuant  
15 to discovery requests?

16 CHIEF JUDGE CHACKIN: Didn't you already read this  
17 in the record, Meridian Communications?

18 THE WITNESS: This is the Meridian Communications  
19 Building and it's dated February 11, 1988. This is the  
20 document -- the first one showed the Advance Building that I  
21 moved to in June of '88, and this was granted in February of  
22 1988. This would, is the one I believe I found in the  
23 Meridian Communications folder, which is not where I'd  
24 normally look for Forestry stuff. It's something that I had  
25 that had not been operational since -- this permit had not

1     been used since June of 1988. There's no reason why I'd  
2     have it in an active file. I simply didn't find it at the  
3     time or think to hunt it down.

4             MR. KNOWLES-KELLETT: We believe the last one,  
5     Your Honor, is Kay Exhibit 30.

6             BY MR. SHAINIS:

7             Q     Here's Kay Exhibit 30, if you would refer to  
8     Exhibit 30?

9             CHIEF JUDGE CHACKIN: Doesn't this also relate to  
10    the Meridian Building?

11            THE WITNESS: This is the --

12            MR. SCHAUBLE: Excuse me one moment, Your Honor.

13            CHIEF JUDGE CHACKIN: You moved from the Meridian  
14    Building?

15            THE WITNESS: I can clarify. There's two Meridian  
16    Buildings. They had one at Sierra that I vacated on or  
17    about January or February of 1990 to the TLF Building and  
18    there was the Meridian Building at Santiago Peak, which I  
19    occupied in February of 1988 and vacated in June of 1988.  
20    So, you have two different Meridian Buildings, my occupancy  
21    and vacating at different dates.

22            MR. SCHAUBLE: Your Honor, just reviewing the  
23    records again, I note that pages three forward were produced  
24    and are contained within WTB Exhibit 289.

25            MR. KELLER: Of Exhibit 30?

1 MR. SCHAUBLE: Yes, pages three forward of the  
2 exhibit. Everything that doesn't appear in the first cover  
3 letter here was produced, so I think that's a moot point,  
4 Your Honor.

5 CHIEF JUDGE CHACKIN: I think there's one more  
6 exhibit which ruling was withheld. I don't know when you  
7 want to take it up. That's Exhibit 36.

8 MR. SHAINIS: Your Honor, that exhibit is not  
9 going to be offered.

10 CHIEF JUDGE CHACKIN: Oh, it's not going to be  
11 offered?

12 MR. SHAINIS: No.

13 CHIEF JUDGE CHACKIN: All right, let the record  
14 reflect that Kay Exhibit 36 has been identified but is not  
15 being offered.

16 (The document referred to,  
17 having been previously marked  
18 for identification as Kay  
19 Exhibit 36, was withdrawn from  
20 evidence.)

21 MR. SHAINIS: Your Honor?

22 CHIEF JUDGE CHACKIN: Yes?

23 MR. SHAINIS: Bureau Exhibit 291 has been  
24 admitted, I believe, into evidence and I have a request of  
25 the Bureau, not on the text which is on the notes, but on

1 the document itself, the first 20, I'm sorry, the first 18  
2 pages. The document is extraordinarily difficult to read  
3 and especially when it refers to the notes. It's difficult  
4 to tell at times what number they're referring to as far as  
5 the note.

6 MR. KELLER: You may recall, even the Bureau's own  
7 witness mistakenly testified for just that reason.

8 MR. KNOWLES-KELLETT: So, your request is for us  
9 to get a new printout of that?

10 MR. KELLER: Something so we can read the  
11 footnotes.

12 MR. SHAINIS: Yes, otherwise --

13 MR. KNOWLES-KELLETT: We'll attempt to do so, Your  
14 Honor. It's a reasonable request.

15 MR. SHAINIS: Thank you.

16 MR. KNOWLES-KELLETT: I believe they still have it  
17 on the disk and we could get new originals.

18 MR. KELLER: Good.

19 MR. KNOWLES-KELLETT: I don't know if we'll get it  
20 before we close. Could we substitute it by letter  
21 afterwards, Your Honor?

22 CHIEF JUDGE CHACKIN: I have no objection to that.  
23 What is difficult to read, you're saying?

24 MR. SHAINIS: The column that's marked, not so  
25 much the name of the column that's marked Notes, the entire

1 column.

2 CHIEF JUDGE CHACKIN: Which page?

3 MR. SHAINIS: Any one of pages one to 19 of the  
4 exhibit.

5 MR. KNOWLES-KELLETT: I believe the testimony  
6 reflects that there was something we thought was a five  
7 turned out to be a six or the other way around.

8 MR. KELLER: Which was a pretty critical mistake,  
9 because one of them wasn't constructed and something had  
10 substantially less.

11 MR. KNOWLES-KELLETT: Right, and the way we  
12 discerned that it had to mean that it was constructed is the  
13 Commission engineer took readings off the transmitter  
14 regarding the power, so we were quite confident that it was,  
15 in fact, there at the date he got there.

16 MR. KELLER: At least some evidence.

17 (Laughter.)

18 MR. KNOWLES-KELLETT: Yes, I apologize, Your  
19 Honor, and I'll try to fix it.

20 CHIEF JUDGE CHACKIN: Well, do you need it for the  
21 purpose of cross-examination?

22 MR. SHAINIS: No, Your Honor, I came to it in my  
23 notes.

24 CHIEF JUDGE CHACKIN: All right.

25 MR. SHAINIS: Since we're in that neighborhood,

1     you'll also supply the report?

2             MR. SCHAUBLE:  Yes.

3             MR. SHAINIS:  I move to strike Bureau Exhibit 292.  
4     There's been no testimony concerning it and moreover, it's  
5     already contained, as I recollect, in Exhibit 347.

6             CHIEF JUDGE CHACKIN:  Is it contained within 347?

7             MR. SCHAUBLE:  It is contained within 347, Your  
8     Honor.

9             CHIEF JUDGE CHACKIN:  So, is there any purpose for  
10    it?

11            MR. SCHAUBLE:  Your Honor, since these records are  
12    already in 347, I don't think it particularly matters one  
13    way or the other.

14            CHIEF JUDGE CHACKIN:  All right, that was 292?  
15    Bureau Exhibit 292, which has been previously received, is  
16    rejected since it's already contained in another exhibit.

17                               (The document referred to,  
18                               having been previously marked  
19                               for identification as WTB  
20                               Exhibit 292 and received in  
21                               evidence, was rejected from  
22                               evidence.)

23            MR. SHAINIS:  Your Honor, Bureau Exhibit 293, I'd  
24    like to strike that.  There have been no questions asked  
25    concerning it.  There's no authentication of it.  I don't

1 know what purpose it would serve to keep it on the record.

2 MR. SCHAUBLE: Your Honor, I would note Mr. Kay  
3 has put similar such records in evidence himself in this  
4 proceeding.

5 MR. SHAINIS: He hasn't finished testifying for  
6 his direct. All I'm saying is, you have this in there, but  
7 there is no --

8 CHIEF JUDGE CHACKIN: What does it prove, standing  
9 alone, without an examination? What issue is it relevant  
10 to?

11 MR. SCHAUBLE: Your Honor, I take it perhaps Mr.  
12 Kay's going to withdraw it is similar exhibits.

13 MR. SHAINIS: Then, I'm going to elicit testimony  
14 from Mr. Kay on those exhibits.

15 MR. SCHAUBLE: So, if you're going to elicit  
16 testimony, this is part and parcel of the same sort of  
17 records, so we think it should be used.

18 CHIEF JUDGE CHACKIN: What issue does it go to?  
19 What does it prove? What do you intend to prove with this  
20 if it remains in the record?

21 MR. SCHAUBLE: Your Honor, this is evidence of Mr.  
22 Kay purchasing a large number of repeaters in the 1994 time  
23 period.

24 CHIEF JUDGE CHACKIN: Yes, so what issue does this  
25 go to? Is this attempting to assist Mr. Kay's position, or

1     what is this?

2                     (Pause.)

3             MR. SCHAUBLE:   Your Honor?

4             CHIEF JUDGE CHACKIN:   Yes?

5                     (Pause.)

6             MR. SCHAUBLE:   Your Honor, in light of the  
7     testimony we've had here, the Bureau withdraws Exhibit 293.

8             CHIEF JUDGE CHACKIN:   All right, I assume you  
9     don't want it in?

10            MR. SHAINIS:   No, Your Honor, not at the present  
11     time.

12            CHIEF JUDGE CHACKIN:   All right.   Bureau Exhibit  
13     293, which was previously received, is not being offered by  
14     the Bureau.   Would you prefer 12 or 12:30?   I don't really  
15     care.

16                                    (The document referred to,  
17                                    having been previously marked  
18                                    for identification as WTB  
19                                    Exhibit 293 and received in  
20                                    evidence, was withdrawn from  
21                                    evidence.)

22            MR. SHAINIS:   Your Honor, we're at a good spot to  
23     break.

24            CHIEF JUDGE CHACKIN:   All right, recess until 1  
25     p.m.

1                   (Whereupon, at 12:00 p.m., the hearing was  
2 recessed, to reconvene at 1:00 p.m. this same day, Tuesday,  
3 January 19, 1999.)  
4  
5  
6  
7  
8  
9

A F T E R N O O N   S E S S I O N

1:15 p.m.

CHIEF JUDGE CHACKIN: Back on the record.

MR. SHAINIS: Your Honor, Mr. Keller has a preliminary matter.

CHIEF JUDGE CHACKIN: Yes, Mr. Keller?

MR. KELLER: I just wanted to revisit for a moment the matter we discussed this morning on the motion to strike the Paul Oei testimony. And, you had asked, well, first of all, I wanted to state that I had not intended to review the transcript of the testimony of Roy Jensen. -- Roy Jensen had testified that he had said some things to Mr. Kay about this and having reviewed the transcript of the Roy Jensen testimony, I just want to represent -- we can all later read the transcript for ourselves -- that, number one, Mr. Jensen was not in Mr. Kay's employ during the time of his May, 1992 inspection, number one. But, number two, more importantly, what Roy Jensen testified that Mr. Kay stated to him was, describe to him ways in which a Motorola service monitor could be used to jam repeaters. He testified nothing about a cross-link or repeater links or cross-band repeaters or any of those various things that have been referred to in this proceeding.

So, for that purpose, I think the testimony of Roy Jensen, whatever it may have been, is not relevant to this

1 discussion.

2 Secondly, you had asked are there any cases, and  
3 it just dawned on me over lunch that actually, I believe  
4 this case which we've discussed before in another context,  
5 that I've just handed out copies of, is, in fact, relevant  
6 to this discussion, particularly the underlying portions of  
7 paragraph 11. Again, this is a situation where some  
8 concerns are raised, the Commission goes out and  
9 investigates it, and decides to deal with it in a certain  
10 limited way, and then later on, when there's a question of  
11 maybe taking it a step further, the ruling is made well,  
12 that's a matter of several years ago that was already  
13 addressed in this other way, so we're not going to take it  
14 further now.

15 Again, I'll just read, just so this is on the  
16 record. The underlying paragraph says, "One of the factors  
17 in such an analysis is the passage of time since the  
18 misconduct. The misconduct alleged by Capitol concerned an  
19 alleged rule violation by RAM in 1990, in 1991. Because  
20 four to five years have passed since those alleged  
21 violations occurred and the Private Radio Bureau determined  
22 at that time that only a warning was warranted with respect  
23 to the specific 1991 violation, we do not believe that these  
24 facts impact adversely on RAM's qualifications to remain a  
25 Commission licensee."

1           I would just say by the same analysis that in May  
2   of 1992, an inspection of this device was conducted. The  
3   CIB Bureau of the Commission made a determination how to  
4   proceed with that then, the formal rulings, and I don't  
5   think now, three or four years later, we should be  
6   revisiting that, seeking to pile on additional sanctions  
7   that were not imposed at that time.

8           So, I would just say that in response to your  
9   request, I believe that this is a case that is instructive  
10   and I certainly will, at a later time, if it becomes  
11   relevant and appropriate, certainly do further research if  
12   it becomes necessary to brief this.

13           CHIEF JUDGE CHACKIN: I assume you have a comment  
14   on this case at this time?

15           MR. SCHAUBLE: Your Honor, we don't believe this  
16   case is precisely on point, just looking at it briefly. The  
17   question here seems to be these overall qualifications and  
18   the fact that at the earlier time, all that was issued was a  
19   warning.

20           CHIEF JUDGE CHACKIN: And, the question, should it  
21   be revisited in a hearing, because of time and the fact that  
22   they'd been given a warning, and that was the --

23           MR. SCHAUBLE: Well, Your Honor, with respect to  
24   time, we note that only about two years passed from the time  
25   of the inspection to the time this case was designated for

1 hearing.

2 MR. KELLER: More than two and a half years.

3 MR. SCHAUBLE: About two and a half years.

4 CHIEF JUDGE CHACKIN: What about the warning  
5 factor?

6 MR. KELLER: Here, more than a warning was even  
7 issued, Your Honor. It went further than a warning.

8 MR. SCHAUBLE: We see nothing in this case, Your  
9 Honor, which is the sort of precedent you were looking for  
10 this morning. We're certainly willing to undertake, you  
11 know, further research and argument on this point.

12 CHIEF JUDGE CHACKIN: All right, let's proceed. I  
13 will keep this case in mind.

14 MR. KELLER: Very well.

15 CHIEF JUDGE CHACKIN: I'm a little familiar with  
16 it, since it is my case.

17 (Laughter.)

18 MR. SHAINIS: Your Honor, I'd like to approach the  
19 witness.

20 CHIEF JUDGE CHACKIN: Yes.

21 MR. SHAINIS: I'm going to show the witness Bureau  
22 Exhibit 294.

23 Whereupon,

24 JAMES A. KAY, JR.

25 having been previously duly sworn, was recalled as a witness

1       herein, and was examined and testified further as follows:

2                       FURTHER CROSS-EXAMINATION

3                       BY MR. SHAINIS:

4               Q       And, Mr. Kay, do you see the signature on that  
5       document?

6               A       Yes.

7               Q       And, whose signature is it?

8                       CHIEF JUDGE CHACKIN: Pardon me?

9                       MR. SCHAUBLE: Go ahead, Your Honor.

10                      CHIEF JUDGE CHACKIN: Counsel?

11                      THE WITNESS: Signature that of Carla Pfeifer.

12                      BY MR. SHAINIS:

13              Q       And, did you sign her name to that document?

14              A       No.

15              Q       Thank you. I'm going to show Mr. Kay Bureau  
16       Exhibit 305. Mr. Kay, that document is a radio station  
17       license, correct?

18              A       Yes.

19              Q       Who is the licensee?

20              A       Carla Pfeifer.

21              Q       What is it licensing?

22              A       A conventional SMRS facility at Castro Peak.

23              Q       What is the date on that document?

24              A       It was granted January 23, 1990.

25              Q       At the time of the grant, would you have been

1 eligible to hold that license?

2 A Yes.

3 Q Would you explain the basis for your answer?

4 A I could have applied for those facilities as a  
5 directional SMRS applicant, with or without a packaged SMRS  
6 user application, or could have applied as a community  
7 repeater operator in the business radio service.

8 Q Thank you. Can you explain what you mean by a  
9 packaged SMRS user application?

10 A Oftentimes, to avoid the difficulty of preparing  
11 extensive showings of loading on frequencies that have some  
12 existing loading, an SMRS operator would prepare what we  
13 called a package application. I believe the coordinators  
14 may have called it that, as well.

15 It consisted of one application for the SMRS base  
16 station facility and one or more SMRS user applications to  
17 use the proposed new facility, such that the proposed  
18 loading on the new facility, plus existing loading on the  
19 frequency within 70 miles of the proposed new facility's  
20 location, would exceed 70 mobile. Thus, the new SMRS  
21 license would be granted into a fully loaded environment,  
22 thus, any loading or lack of loading on any other facilities  
23 owned by the SMRS applicant would be irrelevant.

24 MR. SHAINIS: Thank you.

25 (Pause.)

1 MR. SHAINIS: Your Honor, I'd like to approach the  
2 witness.

3 CHIEF JUDGE CHACKIN: Yes.

4 MR. SHAINIS: I'm showing the witness WTB Exhibit  
5 295.

6 BY MR. SHAINIS:

7 Q Mr. Kay, whose signature is on this form?

8 A The signature of that of Carla Pfeifer. Mine is  
9 also there at the bottom.

10 Q But, where it says Carla Pfeifer, what purports to  
11 be her signature, did you sign her name?

12 A No.

13 MR. SCHAUBLE: Your Honor, we have another copy of  
14 our exhibit.

15 MR. SHAINIS: If you don't mind, it's only a few  
16 more questions on a few documents.

17 CHIEF JUDGE CHACKIN: Okay, go ahead.

18 BY MR. SHAINIS:

19 Q I'm going to show you what has been identified and  
20 received as Bureau Exhibit 296. Have you seen that?

21 A Yes.

22 Q It's a check made payable to NABER, is that  
23 correct?

24 A Yes.

25 Q Did you sign that check with Ms. Pfeifer's

1 signature?

2 A No.

3 Q I'd like to refer you to Bureau Exhibit 297, which  
4 is a letter to Mr. Riley Hollingsworth and Carla Pfeifer.  
5 Do you see the signature there?

6 A Yes.

7 Q Did you sign her name?

8 A No.

9 Q Next, I'm going to show you what has been  
10 identified as Bureau Exhibit 298. It's an August 3, 1987  
11 letter to the FCC. Do you see that?

12 A Yes.

13 Q It is purportedly signed by Carla Pfeifer. Did  
14 you sign her signature?

15 A No.

16 Q I'm next going to show you what has been  
17 identified and received as Bureau Exhibit 299. That's an  
18 August 31, 1987 letter to the Federal Communications  
19 Commission and that bears the signature of Carla Pfeifer.  
20 Did you sign her signature to that letter?

21 A No.

22 Q Next, I'd like to show you what's been received as  
23 Bureau Exhibit 300. It's a lease agreement and the lessee  
24 is Carla Pfeifer. Do you see the signature there?

25 A Yes.

1 Q Did you sign her name?

2 A No.

3 Q Mr. Kay, I want to show you what's been received  
4 in evidence as Bureau Exhibit 301, and this is an invoice on  
5 Buddy Sales, from Buddy Sales. Do you see there's a  
6 signature line at the very bottom?

7 A Yes.

8 Q What is the signature, what does it purport to be?

9 A Carla Pfeifer.

10 Q Did you sign that?

11 A No.

12 Q Mr. Kay, from time to time, you did prepare  
13 applications for Ms. Pfeifer, is that correct?

14 A Yes.

15 Q Other filings for the FCC?

16 A Yes.

17 Q What did you do after you prepared them and she  
18 signed them?

19 A Make a copy and give it to her.

20 MR. SHAINIS: Excuse me. Almost finished, Your  
21 Honor.

22 BY MR. SHAINIS:

23 Q Mr. Kay, please look at Bureau Exhibit 303. Do  
24 you see a signature above your name?

25 A Yes.

1 Q That signature is of whom?

2 A I believe it's Carla Pfeifer.

3 Q Did you sign her name to that?

4 A No.

5 Q I want you to refer to Exhibit 304, Bureau Exhibit  
6 304. This is a letter dated August 4, 1987, to the FCC. Do  
7 you see the signature on that letter?

8 A Yes.

9 Q Whose signature is it?

10 A Carla Pfeifer.

11 Q Did you sign her name to this document?

12 A No.

13 CHIEF JUDGE CHACKIN: What about 302, as long as  
14 we're going? It's a check.

15 MR. SHAINIS: I'll do it, Your Honor.

16 CHIEF JUDGE CHACKIN: Did you sign her signature?

17 THE WITNESS: No, I didn't.

18 MR. SHAINIS: Let me show the witness.

19 CHIEF JUDGE CHACKIN: Does that cover all the  
20 documents signed by Ms. Pfeifer?

21 MR. KELLER: There may be a few. We'll get them  
22 as we come to them, for other purposes.

23 CHIEF JUDGE CHACKIN: All right.

24 MR. SHAINIS: Your Honor, I'm going to show the  
25 witness Bureau Exhibit 311 and ask that you review it.

1 THE WITNESS: Okay.

2 BY MR. SHAINIS:

3 Q And, whose name is on the application? Who filed  
4 the application, in whose name?

5 A The applicant is Oat Trunking Group.

6 Q What is your relationship to Oat Trunking Group?

7 A I'm the president of the corporation.

8 Q Who signed the application?

9 A It's signed by Vincent Cordaro.

10 Q In the transmittal letter, it showed that it was a  
11 package application?

12 A That's correct.

13 Q In the context of this application, what does it  
14 mean by package application?

15 A The two applications propose to perform the  
16 following: To create a new SMRS station on frequency  
17 851.4875 MHz with the primary station to be located at Mount  
18 Lukens. The applicant is James A. Kay, Jr., and to modify  
19 conventional license WXM 915 held by Oat Trunking Group,  
20 Inc., to an SMRS user of the proposed SMRS station. This  
21 converted an existing community repeater facility by Oat  
22 Trunking Group and basically split it in half, with the base  
23 station facility going to myself as an SMRS licensee, and  
24 the controls and mobiles remaining licensed to Oat Trunking  
25 Group as an SMRS user.

1           This was a package application, that sponsors two  
2 applications, were filed simultaneously to have one action  
3 taken by the Commission at one time.

4           Q     Do you know if this application was ever granted?

5           A     It was.

6           Q     I'm going to show you your Exhibit 313 and ask if  
7 this is the license that covers that application?

8           A     This is one of the two. The other is WPAP 683.  
9 This is the grantor user application.

10          Q     Okay, thank you. Mr. Kay, when you sell a  
11 repeater to someone, you have some facilities that you  
12 control and that you're the licensee on -- when I said you,  
13 I'm talking about your company, that you're the controlling  
14 principal, and you have some under management agreement,  
15 correct?

16          A     Yes.

17          Q     Are they all amalgamated together?

18               MR. SCHAUBLE: Objection to the form of the  
19 question. What do you mean by amalgamated together?

20               BY MR. SHAINIS:

21          Q     Are they all combined for billing purposes?

22          A     Oh, we bill them all in the same billing system.

23          Q     Do you differentiate between them in sales,  
24 selling them?

25          A     We also have repeaters in addition, so, no, we

1 don't.

2 Q There was previous testimony by you that no money  
3 was actually paid out under any agreement with Mr. Sobel, to  
4 Mr. Sobel, because the level of revenue had not been  
5 achieved. That has been included in the record.

6 A That's correct.

7 Q Would you explain why the level of revenue had not  
8 been achieved?

9 A For one thing, we were tied up in this, which has  
10 certainly depressed the vitality of our company. Our sales  
11 efforts have been by and large stagnated by this. It  
12 seriously affected our business efforts.

13 Q How about any applications to reconfigure these  
14 systems?

15 A Neither myself nor Mr. Sobel have been able to  
16 have anything granted since mid-1994. They've held  
17 everything.

18 Q The applications that are pending between you and  
19 Mr. Sobel, they would have had an impact, had they been  
20 granted, on the revenue?

21 A Substantial.

22 MR. SCHAUBLE: Objection, speculative.

23 CHIEF JUDGE CHACKIN: Overruled.

24 THE WITNESS: I would estimate substantial if we'd  
25 been able to move forward with UHF trunking, amongst other

1 things. I would have been able to move forward with UHF  
2 trunking, additional trunk systems, where Mr. Sobel and I  
3 use on 800 MHz.

4 BY MR. SHAINIS:

5 Q Would you describe the type of applications that  
6 are pending, just in general terms?

7 MR. SCHAUBLE: Objection, relevance.

8 CHIEF JUDGE CHACKIN: Overruled.

9 THE WITNESS: Modifications to add and delete base  
10 stations, to add additional locations, to create new trunk  
11 SMRS facilities, to add additional channels and additional  
12 channels under the trunks. To add additional locations, add  
13 additional frequencies, combine stations together for more  
14 efficient operation. Many of our systems are proposed for  
15 reconfiguration in the applications that are being held,  
16 both for Mr. Sobel and for myself.

17 BY MR. SHAINIS:

18 Q Are there any pending finder preference  
19 applications?

20 MR. SCHAUBLE: Objection, relevance.

21 CHIEF JUDGE CHACKIN: Overruled.

22 THE WITNESS: Yes, I have several pending and so  
23 does Mr. Sobel.

24 BY MR. SHAINIS:

25 Q The management agreement that you testified about

1 earlier, the one executed in December, along with an  
2 addendum to that?

3 A Yes.

4 MR. SCHAUBLE: This is the one with Mr. Sobel?

5 MR. SHAINIS: Yes, I'm sorry, with Mr. Sobel.

6 MR. KELLER: December '94.

7 BY MR. SHAINIS:

8 Q Did you give any instructions to your counsel as  
9 to how that management agreement should be drafted?

10 MR. SCHAUBLE: Inquiry -- are you waiving the --

11 MR. SHAINIS: No, I'm asking if he gave  
12 instructions. If I asked what the instructions were, then I  
13 would be waiving it. I merely asked him if he gave  
14 instructions. I don't believe it waived the privilege.

15 CHIEF JUDGE CHACKIN: You're correct. Go ahead.

16 THE WITNESS: No, I didn't.

17 BY MR. SHAINIS:

18 Q Just a moment. Exhibit 340, correct. Would you  
19 look at Footnote 5 on page three?

20 A Yes.

21 Q Do you see the sentence that states, "Kay is not a  
22 party to the application of Marc Sobel, File No. 415367"?

23 MR. SCHAUBLE: Objection, Your Honor. I don't  
24 think this part of the document is in evidence at this  
25 point.

1 MR. SHAINIS: Has that been stricken?

2 MR. KELLER: Which part is it?

3 CHIEF JUDGE CHACKIN: Well, in any event, I'll  
4 permit the question.

5 BY MR. SHAINIS:

6 Q Is that a true statement?

7 A Yes, it is.

8 Q Now, I want you to look at page four, look at the  
9 first two sentences of the last paragraph.

10 A Yes.

11 Q Who drafted this language?

12 A Brown & Schwaninger, probably Curt Brown.

13 Q And, a note on page 23, that there is an affidavit  
14 that you signed, how closely did you read this document at  
15 the time you signed that affidavit?

16 MR. SCHAUBLE: Objection, Your Honor.

17 CHIEF JUDGE CHACKIN: Overruled. I mean, you  
18 charged the man with wilfully misrepresenting facts to the  
19 Commission. Isn't he entitled to state the circumstances  
20 under which this document was prepared? I just don't  
21 understand what's your objection?

22 MR. SCHAUBLE: My objection is to the form of the  
23 question, Your Honor.

24 CHIEF JUDGE CHACKIN: Overruled.

25 THE WITNESS: I would have read through it

1 quickly, looking for errors, but not analyzing the meaning  
2 of every nuance of every word through it, not even close.

3 BY MR. SHAINIS:

4 Q And, look at the sentence on page four, which  
5 says, "Because Kay has no interest in any license or station  
6 in common with Marc Sobel," do you see that?

7 A Yes.

8 Q At that time, if you can recollect, what was your  
9 understanding of the import of that station?

10 A Since I had no interest in the licenses -- Brown,  
11 I believe, used the words licenses and stations  
12 interchangeably -- I know I did -- but that I had no  
13 ownership interest as in owning a part of this, being a  
14 partner, in any licenses that were issued to Marc Sobel.

15 Q So, you were not focusing on the management  
16 agreement, is that correct? Did it occur to you when you  
17 signed the affidavit and had reviewed this?

18 A I knew it existed. I knew the same counsel had  
19 done it, but I wasn't specifically focused on it. I recall  
20 a -- that's at this time -- I was aware of the existence and  
21 had thought of it at this time. It was not out of mind.

22 Q But, I assume it did not convey to you, and  
23 correct me if I'm wrong, an ownership interest?

24 A That's correct. I did not -- I was informed that  
25 the management agreement did not constitute an interest.

1 That was my belief.

2 Q And, you had not intention of misleading the  
3 Commission or anyone else, is that correct?

4 MR. SCHAUBLE: Objection.

5 CHIEF JUDGE CHACKIN: Overruled.

6 THE WITNESS: None whatsoever.

7 MR. SHAINIS: Thank you. One moment, Your Honor.

8 CHIEF JUDGE CHACKIN: Yes.

9 (Pause.)

10 BY MR. SHAINIS:

11 Q Mr. Kay, there came a time when you first became  
12 aware that the Commission may have a problem with the  
13 management agreement with Mr. Sobel, is that correct?

14 A Yes.

15 Q When was that? What period of time was that? Can  
16 you reflect a date or the year?

17 A It was either '96 or '97 is when I was informed by  
18 Mr. Sobel he'd been sent a 308(b) request that inquired  
19 about the management agreements.

20 Q And, what was your reaction, if any, to finding  
21 out that there might be a problem?

22 A I was surprised.

23 Q Why?

24 A I had been told the management agreements meant  
25 the FCC rules on all four corners.

1           MR. KNOWLES-KELLETT: Does that constitute a  
2 waiver of the privilege here? In Mr. Kay's deposition, he  
3 refused to tell us anything, any communications with  
4 counsel, then through the discovery, and Mr. Kay's  
5 testifying regarding, you know, keeps saying I was told.

6           MR. SHAINIS: I didn't ask him who told him.

7           MR. KNOWLES-KELLETT: I'd move to strike any  
8 testimony on the grounds that it turns out it came from  
9 Brown and Schwaninger, because we weren't allowed to  
10 discovery. You can't claim the privilege in discovery and  
11 then testify to it in the proceeding.

12           CHIEF JUDGE CHACKIN: I'll overrule the objection.  
13 You can inquire into that matter, limited to that matter.

14           BY MR. SHAINIS:

15           Q     Mr. Kay, when did you, if at all, provide the  
16 Bureau with a copy of the management agreement?

17           A     It would have been sent to them in discovery.  
18 They requested documents. Probably around April, no later  
19 than May of 1995. That's when we were basically emptying  
20 our files of everything, including management agreements.

21           Q     Was the management agreement ever filed with the  
22 Commission prior to being provided to the Commission in  
23 December?

24           A     No, there was no requirement to do so.

25                   (Pause.)

1 CHIEF JUDGE CHACKIN: We do have testimony in the  
2 record that counsel prepared the management agreement  
3 without his input. I think it's reasonable to infer that  
4 counsel did not prepare the management agreement if it  
5 believed that it was inconsistent with the Commission's  
6 rules. So, it's reasonable to infer that in light of  
7 counsel's preparing the management agreement, that this  
8 witness had a right to believe that it was, in the absence  
9 of any other information, that it was in accord with  
10 Commission policy.

11 MR. KNOWLES-KELLETT: We disagree, Your Honor.

12 CHIEF JUDGE CHACKIN: Disagree on what? That  
13 counsel prepared the management agreement?

14 MR. KNOWLES-KELLETT: No.

15 CHIEF JUDGE CHACKIN: What do you disagree with?

16 MR. KNOWLES-KELLETT: We disagree with the  
17 reasonableness of the inference. Mr. Kay went out of his  
18 way to hire rogue counsel --

19 MR. SHAINIS: Pardon me?

20 CHIEF JUDGE CHACKIN: Hire who, rogue counsel?  
21 Are you saying that the Brown firm didn't represent many,  
22 many SMRS applicants? Have you charged them, brought any  
23 charges against them before the Bar, before the District  
24 Bar?

25 MR. SHAINIS: Or even through the Commission?

1 MR. KNOWLES-KELLETT: No.

2 CHIEF JUDGE CHACKIN: Have you charged that with  
3 the Commission?

4 MR. KNOWLES-KELLETT: No.

5 CHIEF JUDGE CHACKIN: Isn't it pretty strong to be  
6 making statements like that?

7 MR. KNOWLES-KELLETT: We addressed in our motion  
8 for summary decision what we thought the problems with Brown  
9 and Schwaninger were, that the motions that he had stated  
10 that Mr. Kay was filing at that time?

11 CHIEF JUDGE CHACKIN: What?

12 MR. KNOWLES-KELLETT: For example, they challenged  
13 the existence of the Wireless Bureau and the --. They  
14 challenged the right of Gary Showman to be the --

15 CHIEF JUDGE CHACKIN: What does that have to do  
16 with whether they're rogue lawyers, the fact that they  
17 fought hard for their client?

18 MR. KNOWLES-KELLETT: I take back that they're  
19 rogue lawyers, Your Honor. We think that Mr. Kay knew  
20 exactly what kind of job he was doing.

21 CHIEF JUDGE CHACKIN: Well, anyhow, let's  
22 continue.

23 MR. SHAINIS: Your Honor, I'm going to close the  
24 loop, I'm going to approach the witness and show him Kay  
25 Exhibit 2, and this has been received into evidence.

1 BY MR. SHAINIS:

2 Q Mr. Kay, do you see that document and do you see  
3 that there's a signature on the document?

4 A Yes.

5 Q Whose signature is it?

6 A It reads Carla Pfeifer.

7 Q Okay, did you sign her name to that document?

8 A No.

9 Q I would also show you Kay Exhibit 3, which has  
10 been received into evidence, and could you identify who the  
11 signature is on that document?

12 A Yes, it reads Carla Pfeifer.

13 Q And, just one moment, please, Mr. Kay. And, did  
14 you sign her name to that document?

15 A No.

16 Q One moment. Mr. Kay, I'm going to show you Kay  
17 Exhibit 9, which has been admitted.

18 MR. SCHAUBLE: Has Kay Exhibit 9 been admitted,  
19 Your Honor?

20 MR. KELLER: No, it hasn't.

21 MR. SHAINIS: Oh, I'm sorry.

22 MR. KELLER: Which has been identified.

23 MR. SHAINIS: Which has been identified, I'm  
24 sorry.

25 MR. KELLER: We've been waiting for this very

1 moment to deal with its possible admission.

2 BY MR. SHAINIS:

3 Q Could you tell me when you were first advised of  
4 the existence of that document?

5 A I believe it was March 8, 1995.

6 Q Okay, and how were you advised of the existence of  
7 the document?

8 A I was contacted by counsel regarding it, and I  
9 believe they faxed me a copy of it.

10 Q On that day, is that correct?

11 A Yes.

12 Q And, if you look at that document, you'll see a  
13 list of people who were mentioned by the Bureau as having  
14 information.

15 A Yes.

16 Q Is one of those people Vincent Cordaro?

17 A Yes.

18 Q And, what was your reaction to seeing Mr.  
19 Cordaro's name on the list?

20 A I was astonished.

21 Q What did you do as a result of seeing his name, if  
22 anything?

23 A I intercommed Mr. Cordaro and asked him to come to  
24 my office. If I recall, I handed him a copy of the document  
25 and said, would you tell me what your name's doing on here?

1           Mr. Cordaro kind of sputtered and said he hadn't a  
2 clue. I said, you haven't talked to the FCC. He said, no.  
3 You haven't sent them anything? He said, no. You have no  
4 clue at all as to why your name would be on here? He said,  
5 no. I said, all right, get to work.

6           MR. SHAINIS: Thank you. Your Honor, I'd like  
7 this document to be admitted into evidence.

8           MR. SCHAUBLE: Your Honor, I object on the basis  
9 of relevance. I don't see where there's anything tied in,  
10 and I don't even see where the document is necessary at all  
11 to the testimony of the witness here. Whatever the witness'  
12 testimony is worth, there's --

13           MR. KELLER: Your Honor, may I be heard on this?

14           CHIEF JUDGE CHACKIN: Yes.

15           MR. KELLER: This relates back to the testimony of  
16 Vincent Cordaro and it relates back to what Vincent Cordaro  
17 did or did not do with Mr. Kay's computer system and with  
18 the computer files.

19           You will note the date on this document, Your  
20 Honor, is March 8, 1995. It will also be established or the  
21 record does establish, although I confess it may take some  
22 findings to show how, but the record does establish that the  
23 files that Mr. Cordaro removed from Mr. Kay's computer,  
24 however they were moved and under whatever auspices, were,  
25 in fact, moved on the late afternoon, early evening of March

1 8.

2 There is at least an inference, Your Honor, that  
3 Mr. Cordaro, contrary to his own testimony, took the files  
4 from Mr. Kay's computer shortly after this confrontation  
5 with Mr. Kay regarding this document.

6 CHIEF JUDGE CHACKIN: Well, but the question --

7 MR. SCHAUBLE: I don't see where that does  
8 anything with respect to the document, Your Honor.

9 MR. KELLER: Well, the document establishes the  
10 date and Mr. Cordaro's connection, among other things.

11 MR. SCHAUBLE: I mean, I don't see what  
12 independent significance the document has, Your Honor. I  
13 mean, separate and apart from the question of what  
14 inferences may be drawn and what, if any, impact it would  
15 have on evaluating Mr. Cordaro's testimony. You know, there  
16 were no questions asked of Mr. Cordaro on this point. I  
17 don't see where the document was necessary at all for Kay to  
18 make his, whatever arguments he wishes to make on this  
19 point.

20 CHIEF JUDGE CHACKIN: What is the significance of  
21 this document toward your claim, Mr. Keller?

22 MR. KELLER: Your Honor, the document shows that  
23 Mr. Kay became aware that the Bureau somehow came up with  
24 the name of Mr. Cordaro as one of the people with  
25 information apparently relevant to accusations against him.

1 He confronted Mr. Cordaro with that information immediately  
2 upon learning it and apparently, very shortly after that  
3 confrontation on that same day, Mr. Cordaro removed Mr.  
4 Kay's billing files from Mr. Kay's computer system.

5 Mr. Cordaro later then produced those files to the  
6 Bureau and made what we believe are false statements about  
7 when the files were taken primarily, and also under what  
8 circumstances they were taken. Mr. Cordaro came in here and  
9 testified that the files were given to him by Mr. Sobel and  
10 that the files that he used to work on a project over a long  
11 period of time, well before his departure from Mr. Kay's  
12 employment.

13 This document, together with the testimony of our  
14 computer expert and an examination of a file, shows, in  
15 fact, that Mr. Cordaro more than likely removed those files  
16 only shortly after being confronted with this particular  
17 document.

18 CHIEF JUDGE CHACKIN: Well, in any event, I don't  
19 see how this document by itself is relevant. You brought  
20 out the facts, the confrontation between Mr. Kay and Mr.  
21 Cordaro and confronted with this document, asked about it.  
22 But, I don't see that the document has independent value, so  
23 I'm going to reject Kay Exhibit 9.

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as Kay  
4 Exhibit 9, was rejected as  
5 evidence.)

6 (Pause.)

7 BY MR. SHAINIS:

8 Q Would you turn to Kay Exhibit 12, please? This is  
9 a letter that you wrote to the U.S. Forest Service, is that  
10 correct?

11 A Yes.

12 Q What was the reason for writing this letter?

13 A It says on 4/22/92, I sent the attached letter,  
14 together with copies of FCC licenses, to obtain modification  
15 updating my USFS permit. I hadn't heard anything from them.  
16 This was to prod them to do it, because the Forest Service  
17 didn't want to have to process modifications to permits.  
18 They considered it an extreme burden and this was about four  
19 and a half months later, trying to prod them to go ahead and  
20 do it, because I knew that in order to do it, they had to  
21 take the about 100 something odd pages I had submitted,  
22 photocopy them all, and distribute them to possibly in  
23 excess of 100 additional Forest Service permit licensees,  
24 what they call circulating it, and that's an awful lot of  
25 paperwork, an awful lot of work for them to do, and they

1       didn't want to have to do it.

2               So, this was to prod them to do it.

3           Q     Okay. Look in the letter at paragraph three.

4           A     Yes?

5           Q     That was one of the motivating factors for writing  
6 this letter, correct?

7           A     Yes.

8           MR. SCHAUBLE: Objection to referring to what?

9           MR. SHAINIS: I'm sorry, I'll rephrase it.

10          BY MR. SHAINIS:

11          Q     Paragraph three indicates that you had received a  
12 copy of a letter that was sent to you that was received by a  
13 competitor, claiming that you had failed to construct  
14 various repeaters at Sierra Peak and Santiago Peak, is that  
15 correct?

16          A     Yes.

17          Q     And, that was one of the motivating factors in  
18 your writing this letter, correct?

19          A     Yes.

20          Q     And, did you ever get the information from the  
21 Forest Service?

22          A     They eventually did it, after much moaning and  
23 groaning.

24          Q     That established that there were frequencies there  
25 that had been constructed?

1           A     Well, they granted the permit with all the  
2     frequencies I already had there included in the permit.  It  
3     was -- by then, my application, my permit, was five years  
4     out of date.

5           Q     I'd like to refer you to Kay Exhibit 13, which has  
6     been admitted into evidence.

7           A     Yes?

8           Q     And, the licensee here is American Mechanical,  
9     correct?

10          A     The Schirmeiser Enterprises, Inc., d/b/a American  
11     Mechanical.

12          Q     They were a customer of yours?

13          A     Yes, they were.

14          Q     And, I'm going to provide you with, you've  
15     previously seen is a list of the call letters.  Could you  
16     tell me, based on that list, which of these call letters  
17     apply to the station license?

18          A     Well, I believe it's WIK 287 on the list, which is  
19     authorized frequency 508.2375 MHz, one of the same  
20     frequencies for which Schirmeiser Enterprises, American  
21     Mechanical, was licensed.

22          Q     All right, and if you would refer to Kay Exhibit  
23     14?

24          A     Yes.

25          Q     Tell me what call letters would be applied to this

1 exhibit?

2 A This is -- Kay Exhibit 14 is WNJL 306.

3 MR. KNOWLES-KELLETT: Can you describe what  
4 applied means? I don't understand the question.

5 MR. SHAINIS: Well, there is --

6 MR. KNOWLES-KELLETT: Do you mean that the  
7 document is relevant to the fact that call center is  
8 constructed?

9 MR. SHAINIS: Yes.

10 MR. KNOWLES-KELLETT: Okay.

11 THE WITNESS: I can clarify for you.

12 BY MR. SHAINIS:

13 Q Please?

14 A WNJL 306 was initially issued in July of 1987,  
15 authorizing frequency 853.2875 MHz for facilities at  
16 Santiago Peak. The Kay Exhibit 14 requests a Forest Service  
17 permit to be relocated -- actually, it says, "Remarks,  
18 relocate permit transmitter to a different building.  
19 Existing permit for this frequency in Meridian Building,"  
20 and it references frequency 853.2875 MHz at Santiago Peak.  
21 This FCC on this Forest Service application here related to  
22 the transmitter of WNJL 306.

23 Q Would you please refer to Kay Exhibit 17?

24 A Yes.

25 Q All right, and what call letters would be covered

1 by this document?

2 A This was done in 1985. I don't believe that I had  
3 call signs under private carrier at that time. They would  
4 have been customers' licenses for community repeaters that I  
5 operated for my customers. This predates the call signs on  
6 the eight seven.

7 Q On that list?

8 A Yes, these were community repeaters at that time  
9 and later converted. This is for the hardware that was for  
10 community repeaters, that later converted to those call  
11 signs.

12 Q You are obviously not the licensee of the  
13 community repeater?

14 A No, my customers were the licensees of the  
15 community repeaters.

16 (Pause.)

17 MR. KNOWLES-KELLETT: Just an inquiry. What call  
18 sign is this relevant to the construction of?

19 MR. SHAINIS: Well, he said on --

20 THE WITNESS: It would be the WIK 726, WIK 896,  
21 WIK 664, WIL 260, WIK 983, WIL 469, one station of WIH 339,  
22 WIK 875, WIK 287, WIK 374. Those are all transmitters  
23 located at Sierra Peak, which is what this Forestry permit  
24 has to do with.

25

1 BY MR. SHAINIS:

2 Q And, would you refer please to Kay Exhibit 19?

3 A Okay.

4 Q And, this refers to what call letters, was it  
5 relevant?

6 A Well, the call signs are on the following pages,  
7 but I don't think they match up.

8 Q You said they don't match up?

9 A These don't match up with the ones the Bureau was  
10 challenging. This was in addition. I did the main clean up  
11 at Sierra for the permits in '92. In about April of '92.  
12 This was dated January of '93. This was -- would add yet  
13 more to Sierra.

14 Q It was to add --

15 A The challenged ones were the April '92 group.

16 Q Okay.

17 A Where I was retroactively adding them to my  
18 permit.

19 MR. SCHAUBLE: Your Honor, I guess we'd inquire at  
20 this point if Kay Exhibit 19 is relevant?

21 MR. KNOWLES-KELLETT: In light of the way we've  
22 limited our allegations.

23 MR. SHAINIS: If you're willing to limit your  
24 allegations only to those call letters, and this is not  
25 identified by those call letters, then I would say that it's

1 not relevant.

2 MR. KNOWLES-KELLETT: Our allegations are to the  
3 ones stipulated that were not constructed or discontinued  
4 for those call letters. So, I think we're in agreement this  
5 isn't relevant, is that right?

6 MR. SHAINIS: That is correct.

7 CHIEF JUDGE CHACKIN: All right, Kay Exhibit 19,  
8 which was previously --

9 MR. SHAINIS: Why don't we just withdraw it?

10 CHIEF JUDGE CHACKIN: -- is withdrawn.

11 (The document referred to,  
12 having been previously marked  
13 for identification as Kay  
14 Exhibit 19, was withdrawn from  
15 evidence.)

16 MR. SHAINIS: One moment, Your Honor.

17 BY MR. SHAINIS:

18 Q Mr. Kay, would you look at Kay Exhibit 23? And,  
19 how does this relate to the call letters that are on the  
20 page in front of you?

21 A This is for frequency 471.9125. This corresponds  
22 to one of the licenses here which is for that frequency.

23 Q What license is that, if you recall?

24 A Going strictly by memory, I can't say I'm 100  
25 percent sure. I think it's the WIL 260. That's my guess.

1 If you show me the chart there, I can tell you for sure.

2 Not that chart.

3 CHIEF JUDGE CHACKIN: Is it a Bureau exhibit?

4 THE WITNESS: The Bureau exhibit that wasn't  
5 admitted, to use it for reference.

6 MR. SCHAUBLE: Bureau Exhibit 291?

7 THE WITNESS: If you want me to tell you for sure.

8 BY MR. SHAINIS:

9 Q What call sign do you think it is?

10 A WIL 260.

11 Q Your Honor, this has not been admitted. I'm  
12 showing the witness for his recollection Bureau Exhibit 291.

13 A Oh, well, yeah, that works just as good. Okay,  
14 good memory, yes, it is. WIL 260. That's the one.

15 (Pause.)

16 Q Mr. Kay, have you looked at Kay Exhibit 24? This  
17 is a letter transmitting to you a lease agreement. Do you  
18 see that?

19 A Yes.

20 Q And, this is for Sierra Peak, correct?

21 A Yes.

22 Q And, at the time of this lease, August 15, 1985,  
23 what call letters would this cover?

24 MR. SCHAUBLE: Excuse me, what was the date you  
25 said on there?

1           MR. SHAINIS: The lease is -- I'm sorry, if I said  
2 anything different, the lease says October, 1987.

3           THE WITNESS: It predates any of the challenged  
4 call signs. That's when we were still a community repeater.

5           BY MR. SHAINIS:

6           Q     I see.

7           A     When we converted from community repeater to  
8 private carrier in my name, they changed call signs more  
9 often than not. That's now WIJ 316, it is now on that list.

10          MR. SCHAUBLE: Your Honor, may I suggest it  
11 appropriate in light of the witness' testimony, it might be  
12 appropriate for counsel to withdraw Kay Exhibit 24?

13          MR. KELLER: I was looking at something else, but  
14 I don't think that's the way I understood the witness'  
15 testimony. Do I understand it was solely due to the call  
16 sign change?

17          CHIEF JUDGE CHACKIN: You know, you're going to  
18 have to speak up a little. The reporter is not going to get  
19 it. That's for all the parties here. The mike is a long  
20 way off, I see, from you, Mr. Keller.

21          MR. KELLER: Okay.

22          CHIEF JUDGE CHACKIN: There's a transcript, but  
23 it's not helped if people don't speak into the mike, because  
24 the reporter doesn't get it if people mumble.

25          MR. KNOWLES-KELLETT: Thank you, Your Honor.

1           MR. KELLER: I was looking for something else at  
2 the time. I thought I understood the witness' testimony  
3 that the facility was the same, but the call sign changed?

4           THE WITNESS: This particular lease related to  
5 frequency 471.3875, which would have been installed in late  
6 1986. At that time, it would have been a community repeater  
7 facility and was later converted to a private carrier. That  
8 particular frequency is not reflecting on the list of the  
9 ones that are challenged. It indicates, however, that I did  
10 maintain equipment at Sierra Peak for a substantial period  
11 of time, well before the issuance of the call signs in  
12 question. I was there on Sierra with equipment, and had  
13 been running equipment there for many years. And, then,  
14 later, the FCC challenged some specific frequencies of  
15 specific call signs, while I continued to maintain the large  
16 amount of equipment on that mountaintop.

17           MR. KELLER: I think that goes just to the weight  
18 of the document, not its relevance or admissibility. I  
19 mean, you could certainly argue that its weight is worth  
20 less, but it is some evidence of a system being constructed.

21           CHIEF JUDGE CHACKIN: All right, let's proceed.

22           BY MR. SHAINIS:

23           Q     Mr. Kay, would you look at what has been admitted  
24 into evidence as Kay Exhibit 25, the site lease agreement  
25 finalized February 26, 1990?

1           A     This is a lease that I had with TLF Corporation  
2     for facilities at Sierra Peak. I relocated from the  
3     Meridian Building at Sierra Peak to the TLF Building in  
4     February of 1990 or immediately thereafter, cause it became  
5     effective March 1, 1990. So, I was moving right in that  
6     period of time to relocate several repeaters that I operated  
7     for the Meridian Building over to the TLF Building.

8           Q     Please look at Kay Exhibit 26, please?

9           A     Yes.

10          Q     How does this relate to the call letters on the  
11     sheet that I gave you?

12          A     This is the initial application for a Forest  
13     Service permit at Santiago Peak, to go into the Meridian  
14     Building for Station WNJL 306, which was granted July of  
15     '87. This is dated February of 1988, and I know I moved it  
16     in almost immediately. That's an installation I will never  
17     forget.

18          Q     And, why is that?

19          A     It's one of those technician horror stories about  
20     installing. I could tell you the story, if you want.

21          Q     No, that's all right.

22          A     It has something to do with a flat tire in the  
23     middle of nowhere, behind locked gates, with no hope of  
24     rescue.

25          Q     Okay, you mentioned it. Is that the same flat

1       tire you mentioned earlier?

2           A       It's the one I mentioned earlier.

3           Q       Would you look at Kay Exhibit 27, and this is a  
4       lease agreement made on November 7, 1987, is that correct?

5           A       Yes.

6           Q       What call letters would this apply to?

7                   MR. KNOWLES-KELLETT:  Objection to apply to.

8                   BY MR. SHAINIS:

9           Q       All right, how does it relate to the call letters  
10       on the list that I gave you?

11          A       This one does.  It's 472.2875.  Let me find the  
12       corresponding call signs that go with that.  I believe there  
13       are two.  I think WIK 983 is one of them.  Yes, WIK 983,  
14       472.2875 at Sierra Peak is one of the ones they challenged,  
15       and that's the frequency that's in use on this lease  
16       agreement dated November, 1987.  I had customers operating  
17       on that frequency at Sierra Peak, amongst other sites, long  
18       before WIK 983 was ever granted.  It was a conversion of a  
19       community repeater to private carrier.

20                 There's also a second call sign on 472.2875, WIL  
21       469.  So, this covers two of the challenged call signs, WIK  
22       983 and WIL 469.  I had an existing community repeater  
23       facility at Sierra Peak with customers paying on it long  
24       before these call signs were even granted.

25          Q       And, I refer you now to Kay Exhibit 28.  This is a